

HOUSE SUBSTITUTE
FOR
HOUSE COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 321

AN ACT

2 To repeal sections 286.020, 287.020, 287.067,
3 287.120, 287.210, 287.390, 287.610, 287.690,
4 287.715, and 287.800, RSMo, and to enact in
5 lieu thereof eleven new sections relating to
6 workers' compensation law.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI,
8 AS FOLLOWS:

9 Section A. Sections 286.020, 287.020, 287.067, 287.120,
10 287.210, 287.390, 287.610, 287.690, 287.715, and 287.800, RSMo,
11 are repealed and eleven new sections enacted in lieu thereof, to
12 be known as sections 286.020, 287.020, 287.067, 287.120, 287.210,
13 287.390, 287.610, 287.690, 287.715, 287.800, and 287.803, to read
14 as follows:

15 286.020. The term of office of each member of the
16 commission shall be six years except that when first constituted
17 one member shall be appointed for two years, one for four years
18 and one for six years, and thereafter all vacancies shall be
19 filled as they occur. The terms of office of the first members
20 of the commission shall begin on the date of their appointment
21 which shall be within thirty days after the effective date of

1 this chapter. Any member appointed to fill a vacancy occurring
2 prior to the expiration of the term for which the member's
3 predecessor was appointed, shall be appointed by the governor, by
4 and with the advice and consent of the senate, for the remainder
5 of such term. Every commission member appointed to serve, either
6 as a permanent, an acting, a temporary, an interim, or as a
7 legislative recess appointment, shall appear for confirmation
8 before the senate within thirty days after the senate next
9 convenes for regular session. Any member appointed or serving
10 the labor and industrial relations commission without senate
11 confirmation after said time period shall immediately resign from
12 the commission and shall not be reappointed to the same office or
13 position in accordance with section 51 of article IV of the
14 Missouri Constitution. The governor may remove any member of the
15 commission, after notice and hearing, for gross inefficiency,
16 mental or physical incapacity, neglect of duties, malfeasance,
17 misfeasance or nonfeasance in office, incompetence or for any
18 offense involving moral turpitude or oppression in office.

19 287.020. 1. The word "employee" as used in this chapter
20 shall be construed to mean every person in the service of any
21 employer, as defined in this chapter, under any contract of hire,
22 express or implied, oral or written, or under any appointment or
23 election, including executive officers of corporations. Any
24 reference to any employee who has been injured shall, when the
25 employee is dead, also include his dependents, and other persons

1 to whom compensation may be payable. The word "employee" shall
2 also include all minors who work for an employer, whether or not
3 such minors are employed in violation of law, and all such minors
4 are hereby made of full age for all purposes under, in connection
5 with, or arising out of this chapter. The word "employee" shall
6 not include an individual who is the owner and operator of a
7 motor vehicle which is leased or contracted with a driver to a
8 for-hire common or contract motor vehicle carrier operating
9 within a commercial zone as defined in section 390.020 or
10 390.041, RSMo, or operating under a certificate issued by the
11 motor carrier and railroad safety division of the department of
12 economic development or by the interstate commerce commission.

13 2. The word "accident" as used in this chapter shall[,
14 unless a different meaning is clearly indicated by the context,]
15 be construed to mean an unexpected traumatic event or unusual
16 strain identifiable by time and place of occurrence [or
17 unforeseen identifiable event or series of events happening
18 suddenly and violently, with or without human fault, and]
19 producing at the time objective symptoms of an injury, caused by
20 a specific event during a single work shift. [An injury is
21 compensable if it is clearly work related. An injury is clearly
22 work related if work was a substantial factor in the cause of the
23 resulting medical condition or disability. An injury is not
24 compensable merely because work was a triggering or precipitating
25 factor.]

1 3. (1) In this chapter the term "injury" is hereby defined
2 to be an injury which has arisen out of and in the course of
3 employment. The injury must be incidental to and not independent
4 of the relation of employer and employee. An injury by accident
5 is compensable only if the accident was the dominant factor in
6 causing the mental or physical condition or disability.

7 Ordinary, gradual deterioration or progressive degeneration of
8 the body caused by aging or by the normal activities of day-to-
9 day living shall not be compensable[, except where the
10 deterioration or degeneration follows as an incident of
11 employment].

12 (2) An injury shall be deemed to arise out of and in the
13 course of the employment only if:

14 (a) It is reasonably apparent, upon consideration of all
15 the circumstances, that the [employment] accident is [a
16 substantial] the dominant factor in causing the injury; and

17 (b) [It can be seen to have followed as a natural incident
18 of the work; and

19 (c) It can be fairly traced to the employment as a
20 proximate cause; and

21 (d)] It does not come from a hazard or risk unrelated to
22 the employment to which workers would have been equally exposed
23 outside of and unrelated to the employment in normal
24 nonemployment life;

25 (3) This chapter shall not apply to personal health

1 conditions of an employee which manifest themselves in the
2 employment in which the accident is not the dominant factor in
3 the resulting need for medical treatment.

4 (4) An injury resulting directly or indirectly from
5 idiopathic causes is not compensable.

6 (5) "Dominant factor" shall mean the accident is the
7 prevailing factor in relation to any other factors contributing
8 to the resulting medical condition or disability.

9 (6) A cardiovascular, pulmonary, respiratory, or other
10 disease, or cerebrovascular accident or myocardial infarction
11 suffered by a worker is an injury only if the accident is the
12 dominant factor in causing the resulting medical condition or
13 disability.

14 (7) The employee shall not be entitled to recover for the
15 aggravation of a preexisting condition, except to the extent that
16 the work-related injury causes increased permanent disability.
17 Any award of compensation shall be reduced by the amount of
18 permanent partial disability determined to be preexisting disease
19 or condition to cause or prolong disability or need for
20 treatment, the resultant condition is compensable only to the
21 extent that the compensable injury is and remains the dominant
22 cause of the disability or need for treatment.

23 (8) The terms "injury" and "personal injuries" shall mean
24 violence to the physical structure of the body and to the
25 personal property which is used to make up the physical structure

1 of the body, such as artificial dentures, artificial limbs, glass
2 eyes, eyeglasses, and other prostheses which are placed in or on
3 the body to replace the physical structure and such disease or
4 infection as naturally results therefrom. These terms shall in
5 no case except as specifically provided in this chapter be
6 construed to include occupational disease in any form, nor shall
7 they be construed to include any contagious or infectious disease
8 contracted during the course of the employment, nor shall they
9 include death due to natural causes occurring while the worker is
10 at work.

11 [4.] (9) "Death" when mentioned as a basis for the right to
12 compensation means only death resulting from such violence and
13 its resultant effects occurring within three hundred weeks after
14 the accident; except that in cases of occupational disease, the
15 limitation of three hundred weeks shall not be applicable.

16 [5.] 4. Without otherwise affecting either the meaning or
17 interpretation of the abridged clause, "personal injuries arising
18 out of and in the course of such employment", it is hereby
19 declared not to cover workers except while engaged in or about
20 the premises where their duties are being performed, or where
21 their services require their presence as a part of such service.

22 [6.] 5. A person who is employed by the same employer for
23 more than five and one-half consecutive work days shall for the
24 purpose of this chapter be considered an "employee".

25 [7.] 6. The term "total disability" as used in this chapter

1 shall mean inability to return to any employment and not merely
2 mean inability to return to the employment in which the employee
3 was engaged at the time of the accident.

4 [8.] 7. As used in this chapter and all acts amendatory
5 thereof, the term "commission" shall hereafter be construed as
6 meaning and referring exclusively to the labor and industrial
7 relations commission of Missouri, and the term "director" shall
8 hereafter be construed as meaning the director of the department
9 of insurance of the state of Missouri or such agency of
10 government as shall exercise the powers and duties now conferred
11 and imposed upon the department of insurance of the state of
12 Missouri.

13 [9.] 8. The term "division" as used in this chapter means
14 the division of workers' compensation of the department of labor
15 and industrial relations of the state of Missouri.

16 [10.] 9. For the purposes of this chapter, the term "minor"
17 means a person who has not attained the age of eighteen years;
18 except that, for the purpose of computing the compensation
19 provided for in this chapter, the provisions of section 287.250
20 shall control.

21 287.067. 1. In this chapter the term "occupational
22 disease" is hereby defined to mean, unless a different meaning is
23 clearly indicated by the context, an identifiable disease arising
24 with or without human fault out of and in the course of the
25 employment. Ordinary diseases of life to which the general

1 public is exposed outside of the employment shall not be
2 compensable, except where the diseases follow as an incident of
3 an occupational disease as defined in this section. The disease
4 need not to have been foreseen or expected but after its
5 contraction it must appear to have had its origin in a risk
6 connected with the employment and to have flowed from that source
7 as a rational consequence.

8 2. An occupational disease is compensable only if [it is
9 clearly work related and meets the requirements of an injury
10 which is compensable as provided in subsections 2 and 3 of
11 section 287.020. An occupational disease is not compensable
12 merely because work was a triggering or precipitating factor] the
13 occupational exposure was the dominant factor in causing the
14 resulting medical condition or disability. Ordinary, gradual
15 deterioration or progressive degeneration of the body caused by
16 aging or by the normal activities of day-to-day living shall not
17 be compensable. "Dominant factor" shall mean the occupational
18 exposure is the prevailing factor in relation to any other
19 factors contributing to the resulting medical condition or
20 disability.

21 3. "Loss of hearing due to industrial noise" is recognized
22 as an occupational disease for purposes of this chapter and is
23 hereby defined to be a loss of hearing in one or both ears due to
24 prolonged exposure to harmful noise in employment. "Harmful
25 noise" means sound capable of producing occupational deafness.

1 4. "Radiation disability" is recognized as an occupational
2 disease for purposes of this chapter and is hereby defined to be
3 that disability due to radioactive properties or substances or to
4 Roentgen rays (X rays) or exposure to ionizing radiation caused
5 by any process involving the use of or direct contact with radium
6 or radioactive properties or substances or the use of or direct
7 exposure to Roentgen rays (X rays) or ionizing radiation.

8 5. Disease of the lungs or respiratory tract, hypotension,
9 hypertension, or disease of the heart or cardiovascular system,
10 including carcinoma, may be recognized as occupational diseases
11 for the purposes of this chapter and are defined to be disability
12 due to exposure to smoke, gases, carcinogens, inadequate oxygen,
13 or psychological stress of firefighters of a paid fire department
14 if a direct causal relationship is established.

15 6. Any employee who is exposed to and contracts any
16 contagious or communicable disease arising out of and in the
17 course of his or her employment shall be eligible for benefits
18 under this chapter as an occupational disease.

19 7. With regard to occupational disease due to repetitive
20 motion, if the exposure to the repetitive motion which is found
21 to be the cause of the injury is for a period of less than three
22 months and the evidence demonstrates that the exposure to the
23 repetitive motion with a prior employer was the [substantial
24 contributing] dominant factor [to] in causing the injury, the
25 prior employer shall be liable for such occupational disease.

1 287.120. 1. Every employer subject to the provisions of
2 this chapter shall be liable, irrespective of negligence, to
3 furnish compensation [under the provisions of] pursuant to this
4 chapter for personal injury or death of the employee by accident
5 arising out of and in the course of [his] the employee's
6 employment, and shall be released from all other liability
7 therefor whatsoever, whether to the employee or any other person.
8 The term "accident" as used in this section shall include, but
9 not be limited to, injury or death of the employee caused by the
10 unprovoked violence or assault against the employee by any
11 person.

12 2. The rights and remedies herein granted to an employee
13 shall exclude all other rights and remedies of the employee, his
14 wife, her husband, parents, personal representatives, dependents,
15 heirs or next kin, at common law or otherwise, on account of such
16 accidental injury or death, except such rights and remedies as
17 are not provided for by this chapter.

18 3. No compensation shall be allowed [under] pursuant to
19 this chapter for the injury or death due to the employee's
20 intentional self-inflicted injury, but the burden of proof of
21 intentional self-inflicted injury shall be on the employer or the
22 person contesting the claim for allowance.

23 4. Where the injury is caused by the failure of the
24 employer to comply with any statute in this state or any lawful
25 order of the division or the commission, the compensation and

1 death benefit provided [for under] pursuant to this chapter shall
2 be increased fifteen percent.

3 5. Where the injury is caused by the willful failure of the
4 employee to use safety devices where provided by the employer, or
5 from the employee's failure to obey any reasonable rule adopted
6 by the employer for the safety of employees, which rule has been
7 kept posted in a conspicuous place on the employer's premises,
8 the compensation and death benefit provided for herein shall be
9 reduced fifteen percent; provided, that it is shown that the
10 employee had actual knowledge of the rule so adopted by the
11 employer; and provided, further, that the employer had, prior to
12 the injury, made a diligent effort to cause his or her employees
13 to use the safety device or devices and to obey or follow the
14 rule so adopted for the safety of the employees.

15 6. (1) Where the employee fails to obey any rule or policy
16 adopted by the employer relating to a drug-free workplace or the
17 use of alcohol or nonprescribed controlled drugs in the
18 workplace, which rule or policy has been kept posted in a
19 conspicuous place on the employer's premises, the compensation
20 and death benefit provided for herein shall be reduced [fifteen]
21 fifty percent if the injury was sustained in conjunction with the
22 use of alcohol or nonprescribed controlled drugs; provided[, that
23 it is shown that the employee had actual knowledge of the rules
24 or policy so adopted by the employer and, provided further] that
25 the employer had, prior to the injury, made a diligent effort to

1 inform the employee of the requirement to obey any reasonable
2 rule or policy adopted by the employer.

3 (2) If, however, the use of alcohol or nonprescribed
4 controlled drugs in violation of the employer's rule or policy
5 which is posted and publicized as set forth in subdivision (1) is
6 the proximate cause of the injury, then the benefits or
7 compensation otherwise payable [under] pursuant to this chapter
8 for death or disability shall be forfeited. The forfeiture of
9 benefits or compensation shall not apply when:

10 (a) The employer has actual knowledge of the employee's use
11 of the alcohol or nonprescribed controlled drugs and in the face
12 thereof fails to take any recuperative or disciplinary action; or

13 (b) As part of the employee's employment, he or she is
14 authorized or ordered by the employer to use such alcohol or
15 nonprescribed controlled drugs.

16 The voluntary use of alcohol to the percentage of blood alcohol
17 sufficient under Missouri law to constitute legal intoxication
18 shall be conclusively presumed to mean the voluntary use of
19 alcohol under such circumstances is the proximate cause of the
20 injury.

21 7. Where the employee's participation in a voluntary
22 recreational activity or program is the proximate cause of the
23 injury, benefits or compensation otherwise payable [under]
24 pursuant to this chapter for death or disability shall be

1 forfeited regardless that the employer may have promoted,
2 sponsored or supported the recreational activity or program,
3 expressly or impliedly, in whole or in part. The forfeiture of
4 benefits or compensation shall not apply when:

5 (a) The employee was directly ordered by the employer to
6 participate in such recreational activity or program;

7 (b) The employee was paid wages or travel expenses while
8 participating in such recreational activity or program; or

9 (c) The injury from such recreational activity or program
10 occurs on the employer's premises due to an unsafe condition and
11 the employer had actual knowledge of the employee's participation
12 in the recreational activity or program and of the unsafe
13 condition of the premises and failed to either curtail the
14 recreational activity or program or cure the unsafe condition.

15 8. Mental injury resulting from work related stress does
16 not arise out of and in the course of the employment, unless it
17 is demonstrated that the stress is work related and was
18 extraordinary and unusual. The amount of work stress shall be
19 measured by objective standards and actual events.

20 9. A mental injury is not considered to arise out of and in
21 the course of the employment if it resulted from any disciplinary
22 action, work evaluation, job transfer, layoff, demotion,
23 termination or any similar action taken in good faith by the
24 employer.

25 10. The ability of a firefighter to receive benefits for

1 psychological stress [under] pursuant to section 287.067 shall
2 not be diminished by the provisions of subsections 8 and 9 of
3 this section.

4 287.210. 1. After an employee has received an injury he or
5 she shall from time to time thereafter during disability submit
6 to reasonable medical examination at the request of the employer,
7 his or her insurer, the state if there is a second injury claim,
8 the commission, the division or an administrative law judge, the
9 time and place of which shall be fixed with due regard to the
10 convenience of the employee and his or her physical condition and
11 ability to attend. The employee may have his or her own
12 physician present, and if the employee refuses to submit to the
13 examination, or in any way obstructs it, his or her right to
14 compensation shall be forfeited during such period unless in the
15 opinion of the commission the circumstances justify the refusal
16 or obstruction.

17 2. The commission, the division or administrative law judge
18 shall, when deemed necessary, appoint a duly qualified impartial
19 physician to examine the injured employee, and any physician so
20 chosen, if he or she accepts the appointment, shall promptly make
21 the examination requested and make a complete medical report to
22 the commission or the division in such duplication as to provide
23 all parties with copies thereof. The physician's fee shall be
24 fair and reasonable, as provided in subsection 3 of section
25 287.140, and the fee and other reasonable costs of the impartial

1 examination may be paid as other costs under this chapter. If
2 all the parties shall have had reasonable access thereto, the
3 report of the physician shall be admissible in evidence.

4 3. The testimony of any physician who treated or examined
5 the injured employee shall be admissible in evidence in any
6 proceedings for compensation under this chapter, but only if the
7 medical report of the physician has been made available to all
8 parties as in this section provided. Immediately upon receipt of
9 notice from the division or the commission setting a date for
10 hearing of a case in which the nature and extent of an employee's
11 disability is to be determined, the parties or their attorneys
12 shall arrange, without charge or costs, each to the other, for an
13 exchange of all medical reports, including those made both by
14 treating and examining physician or physicians, to the end that
15 the parties may be commonly informed of all medical findings and
16 opinions. The exchange of medical reports shall be made at least
17 seven days before the date set for the hearing and failure of any
18 party to comply may be grounds for asking for and receiving a
19 continuance, upon proper showing by the party to whom the medical
20 reports were not furnished. If any party fails or refuses to
21 furnish the opposing party with the medical report of the
22 treating or examining physician at least seven days before such
23 physician's deposition or personal testimony at the hearing, as
24 in this section provided, upon the objection of the party who was
25 not provided with the medical report, the physician shall not be

1 permitted to testify at that hearing or by medical deposition.

2 4. Upon request, an administrative law judge, the division,
3 or the commission shall be provided with a copy of any medical
4 report.

5 5. As used in this chapter the terms "physician's report"
6 and "medical report" mean the report of any physician made on any
7 printed form authorized by the division or the commission or any
8 complete medical report. As used in this chapter the term
9 "complete medical report" means the report of a physician giving
10 the physician's qualifications and the patient's history,
11 complaints, details of the findings of any and all laboratory,
12 X-ray and all other technical examinations, diagnosis, prognosis,
13 nature of disability, if any, and an estimate of the percentage
14 of permanent partial disability, if any. An element or elements
15 of a complete medical report may be met by the physician's
16 records.

17 6. Upon the request of a party, the physician or physicians
18 who treated or are treating the injured employee shall be
19 required to furnish to the parties a rating and complete medical
20 report on the injured employee, at the expense of the party
21 selecting the physician, along with a complete copy of the
22 physician's clinical record including copies of any records and
23 reports received from other health care providers.

24 7. The testimony of a treating or examining physician may
25 be submitted in evidence on the issues in controversy by a

1 complete medical report and shall be admissible without other
2 foundational evidence subject to compliance with the following
3 procedures. The party intending to submit a complete medical
4 report in evidence shall give notice at least sixty days prior to
5 the hearing to all parties and shall provide reasonable
6 opportunity to all parties to obtain cross-examination testimony
7 of the physician by deposition. The notice shall include a copy
8 of the report and all the clinical and treatment records of the
9 physician including copies of all records and reports received by
10 the physician from other health care providers. The party
11 offering the report must make the physician available for
12 cross-examination testimony by deposition not later than seven
13 days before the matter is set for hearing, and each
14 cross-examiner shall compensate the physician for the portion of
15 testimony obtained in an amount not to exceed a rate of
16 reasonable compensation taking into consideration the specialty
17 practiced by the physician. Cross-examination testimony shall
18 not bind the cross-examining party. Any testimony obtained by
19 the offering party shall be at that party's expense on a
20 proportional basis, including the deposition fee of the
21 physician. Upon request of any party, the party offering a
22 complete medical report in evidence must also make available
23 copies of X rays or other diagnostic studies obtained by or
24 relied upon by the physician. Within ten working days after
25 receipt of such notice a party shall dispute whether a report

1 meets the requirements of a complete medical report by providing
2 written objections to the offering party stating the grounds for
3 the dispute, and at the request of any party, the administrative
4 law judge shall rule upon such objections upon pretrial hearing
5 whether the report meets the requirements of a complete medical
6 report and upon the admissibility of the report or portions
7 thereof. If no objections are filed the report is admissible,
8 and any objections thereto are deemed waived. Nothing herein
9 shall prevent the parties from agreeing to admit medical reports
10 or records by consent. [The provisions of this subsection shall
11 not apply to claims against the second injury fund.]

12 8. Certified copies of the proceedings before any coroner
13 holding an inquest over the body of any employee receiving an
14 injury in the course of his employment resulting in death shall
15 be admissible in evidence in any proceedings for compensation
16 under this chapter, and it shall be the duty of the coroner to
17 give notice of the inquest to the employer and the dependents of
18 the deceased employee, who shall have the right to cross-examine
19 the witness.

20 9. The division or the commission may in its discretion in
21 extraordinary cases order a postmortem examination and for that
22 purpose may also order a body exhumed.

23 287.390. 1. [Nothing in this chapter shall be construed as
24 preventing the] Parties to claims hereunder [from entering] may
25 enter into voluntary agreements in settlement thereof, but no

1 agreement by an employee or his or her dependents to waive his or
2 her rights under this chapter shall be valid, nor shall any
3 agreement of settlement or compromise of any dispute or claim for
4 compensation under this chapter be valid until approved by an
5 administrative law judge or the commission, nor shall an
6 administrative law judge or the commission approve any settlement
7 which is not in accordance with the rights of the parties as
8 given in this chapter. No such agreement shall be valid unless
9 made after seven days from the date of the injury or death. An
10 administrative law judge, associate legal advisor, legal advisor,
11 or the commission shall approve an agreement as valid and
12 enforceable unless the administrative law judge, associate legal
13 advisor, legal advisor, or the commission makes a specific
14 finding of fact that the agreement is manifestly unjust.

15 2. A compromise settlement approved by an administrative
16 law judge or the commission during the employee's lifetime shall
17 extinguish and bar all claims for compensation for the employee's
18 death if the settlement compromises a dispute on any question or
19 issue other than the extent of disability or the rate of
20 compensation.

21 3. Notwithstanding the provisions of section 287.190, an
22 employee shall be afforded the option of receiving a compromise
23 settlement as a one-time lump sum payment. A compromise
24 settlement approved by an administrative law judge or the
25 commission shall indicate the manner of payment chosen by the

1 employee.

2 4. A minor dependent, by parent or conservator, may
3 compromise disputes and may enter into a compromise settlement
4 agreement, and upon approval by an administrative law judge or
5 the commission the settlement agreement shall have the same force
6 and effect as though the minor had been an adult. The payment of
7 compensation by the employer in accordance with the settlement
8 agreement shall discharge the employer from all further
9 obligation.

10 287.610. 1. The division may, with the advice and consent
11 of the senate, appoint such number of administrative law judges
12 as it may find necessary, but not exceeding twenty-five in number
13 beginning January 1, 1999, with one additional appointment
14 authorized as of July 1, 2000, and one additional appointment
15 authorized in each succeeding year thereafter until and including
16 the year 2004, for a maximum of thirty authorized administrative
17 law judges. Appropriations for any additional appointment shall
18 be based upon necessity, measured by the requirements and needs
19 of each division office. Administrative law judges shall be duly
20 licensed lawyers under the laws of this state. Administrative
21 law judges shall not practice law or do law business and shall
22 devote their whole time to the duties of their office. Beginning
23 July 1, 2004, the term of office of each administrative law judge
24 shall be four years. The director of the division of workers'
25 compensation shall publish and maintain on the division's web

1 site the appointment dates or initial dates of services for all
2 administrative law judges. As of July 1, 2004, the eight
3 administrative law judges most senior in service shall have a
4 term of one year expiring on June 30, 2005, the subsequent eight
5 administrative law judges most senior in service shall have a
6 term of two years expiring on June 30, 2006, the subsequent eight
7 administrative law judges most senior in service shall have a
8 term of three years expiring on June 30, 2007, and the remaining
9 administrative law judges in office on July 1, 2004, shall have a
10 term of four years expiring on June 30, 2008. Any administrative
11 law judge appointed to fill a vacancy occurring prior to the
12 expiration of the term for which the member's predecessor was
13 appointed, shall be appointed with the advice and consent of the
14 senate for the remainder of such term. Any member appointed
15 while the general assembly is not in session must appear for
16 confirmation before the senate within thirty days after the
17 senate next convenes for regular session or such appointment is
18 rendered invalid. Administrative law judges may be eligible for
19 reappointment; however, for continuous service such person must
20 be reconfirmed by the senate prior to the expiration of the
21 original term. Any administrative law judge may be discharged or
22 removed only by the governor pursuant to an evaluation and
23 recommendation by the administrative law judge review committee,
24 hereinafter referred to as "the committee", of the judge's
25 conduct, performance and productivity.

1 2. The division shall require and perform annual
2 evaluations of an administrative law judge, associate
3 administrative law judge and legal advisor's conduct, performance
4 and productivity based upon written standards established by
5 rule. The division, by rule, shall establish the written
6 standards on or before January 1, 1999.

7 (1) After an evaluation by the division, any administrative
8 law judge, associate administrative law judge or legal advisor
9 who has received an unsatisfactory evaluation in any of the three
10 categories of conduct, performance or productivity, may appeal
11 the evaluation to the committee.

12 (2) The division director shall refer an unsatisfactory
13 evaluation of any administrative law judge, associate
14 administrative law judge or legal advisor to the committee.

15 (3) When a written, signed complaint is made against an
16 administrative law judge, associate administrative law judge or
17 legal advisor, it shall be referred to the director of the
18 division for a determination of merit. When the director finds
19 the complaint has merit, it shall be referred to the committee
20 for investigation and review.

21 3. The administrative law judge review committee shall be
22 composed of one administrative law judge, who shall act as a peer
23 judge on the committee and shall be domiciled in a division
24 office other than that of the judge being reviewed, one employee
25 representative and one employer representative, neither of whom

1 shall have any direct or indirect employment or financial
2 connection with a workers' compensation insurance company, claims
3 adjustment company, health care provider nor be a practicing
4 workers' compensation attorney. The employee representative and
5 employer representative shall have a working knowledge of
6 workers' compensation. The employee and employer representative
7 shall serve for four-year staggered terms and they shall be
8 appointed by the governor. The initial employee representative
9 shall be appointed for a two-year term. The administrative law
10 judge who acts as a peer judge shall be appointed by the chairman
11 of the labor and industrial relations commission and shall not
12 serve on any two consecutive reviews conducted by the committee.
13 Chairmanship of the committee shall rotate between the employee
14 representative and the employer representative every other year.
15 Staffing for the administrative review committee shall be
16 provided, as needed, by the director of the department of labor
17 and industrial relations and shall be funded from the workers'
18 compensation fund. The committee shall conduct a hearing as part
19 of any review of a referral or appeal made according to
20 subsection 2 of this section.

21 4. The committee shall determine within thirty days whether
22 an investigation shall be conducted for a referral made pursuant
23 to subdivision (3) of subsection 2 of this section. The
24 committee shall make a final referral to the governor pursuant to
25 subsection 1 of this section within two hundred seventy days of

1 the receipt of a referral or appeal.

2 5. The administrative law judges appointed by the division
3 shall only have jurisdiction to hear and determine claims upon
4 original hearing and shall have no jurisdiction upon any review
5 hearing, either in the way of an appeal from an original hearing
6 or by way of reopening any prior award, except to correct a
7 clerical error in an award or settlement if the correction is
8 made by the administrative law judge within twenty days of the
9 original award or settlement. The labor and industrial relations
10 commission may remand any decision of an administrative law judge
11 for a more complete finding of facts. The commission may also
12 correct a clerical error in awards or settlements within thirty
13 days of its final award. With respect to original hearings, the
14 administrative law judges shall have such jurisdiction and powers
15 as are vested in the division of workers' compensation under
16 other sections of this chapter, and wherever in this chapter the
17 word "commission", "commissioners" or "division" is used in
18 respect to any original hearing, those terms shall mean the
19 administrative law judges appointed under this section. When a
20 hearing is necessary upon any claim, the division shall assign an
21 administrative law judge to such hearing. Any administrative law
22 judge shall have power to approve contracts of settlement, as
23 provided by section 287.390, between the parties to any
24 compensation claim or dispute under this chapter pending before
25 the division of workers' compensation. Any award by an

1 administrative law judge upon an original hearing shall have the
2 same force and effect, shall be enforceable in the same manner as
3 provided elsewhere in this chapter for awards by the labor and
4 industrial relations commission, and shall be subject to review
5 as provided by section 287.480.

6 6. Any of the administrative law judges employed pursuant
7 to this section may be assigned on a temporary basis to the
8 branch offices as necessary in order to ensure the proper
9 administration of this chapter.

10 7. All administrative law judges and legal advisors shall
11 be required to participate in, on a continuing basis, specific
12 training that shall pertain to those elements of knowledge and
13 procedure necessary for the efficient and competent performance
14 of the administrative law judges' and legal advisors' required
15 duties and responsibilities. Such training requirements shall be
16 established by the division subject to appropriations and shall
17 include training in medical determinations and records, mediation
18 and legal issues pertaining to workers' compensation
19 adjudication. Such training may be credited toward any
20 continuing legal education requirements.

21 8. No rule or portion of a rule promulgated pursuant to the
22 authority of this section shall become effective unless it has
23 been promulgated pursuant to the provisions of chapter 536, RSMo.

24 287.690. 1. [Prior to December 31, 1993,] For the purpose
25 of providing for the expense of administering this chapter and

1 for the purpose set out in subsection 2 of this section, every
2 person, partnership, association, corporation, whether organized
3 under the laws of this or any other state or country, the state
4 of Missouri, including any of its departments, divisions,
5 agencies, commissions, and boards or any political subdivisions
6 of the state who self-insure or hold themselves out to be any
7 part self-insured, company, mutual company, the parties to any
8 interindemnity contract, or other plan or scheme, and every other
9 insurance carrier, insuring employers in this state against
10 liability for personal injuries to their employees, or for death
11 caused thereby, under this chapter, shall pay, as provided in
12 this chapter, tax upon the net deposits, net premiums or net
13 assessments received, whether in cash or notes in this state, or
14 on account of business done in this state, for such insurance in
15 this state at the rate of two percent in lieu of all other taxes
16 on such net deposits, net premiums or net assessments, which
17 amount of taxes shall be assessed and collected as herein
18 provided. Beginning October 31, [1993] 2003, and every year
19 thereafter, the director of the division of workers' compensation
20 shall estimate the amount of revenue required to administer this
21 chapter and the director shall determine the rate of tax to be
22 paid in the following calendar year pursuant to this section
23 commencing with the calendar year beginning on January 1, [1994]
24 2004. If the balance of the fund estimated to be on hand on
25 December thirty-first of the year each tax rate determination is

1 made is less than one hundred [ten] percent of the previous
2 year's expenses plus any additional revenue required due to new
3 statutory requirements given to the division by the general
4 assembly, then the director shall impose a tax not to exceed two
5 percent in lieu of all other taxes on net deposits, net premiums
6 or net assessments, rounded up to the nearest one-half of a
7 percentage point, which amount of taxes shall be assessed and
8 collected as herein provided. For any year in which collections
9 from the maximum two percent tax rate are insufficient to meet
10 the fund balance requirement of one hundred percent of the
11 previous year's expenses, an audit shall be conducted by the
12 state auditor of the division of workers' compensation. A report
13 of such audit shall be submitted to the speaker of the house of
14 representatives and the president pro tempore of the senate upon
15 its completion. The net premium equivalent for individual
16 self-insured employers and any group of political subdivisions of
17 this state qualified to self-insure their liability pursuant to
18 this chapter as authorized by section 537.620, RSMo, shall be
19 based on average rate classifications calculated by the
20 department of insurance as taken from premium rates filed by the
21 twenty insurance companies providing the greatest volume of
22 workers' compensation insurance coverage in this state. For
23 employers qualified to self-insure their liability pursuant to
24 this chapter, the rates filed by such group of employers in
25 accordance with subsection 2 of section 287.280 shall be the net

1 premium equivalent. Every entity required to pay the tax imposed
2 pursuant to this section and section 287.730 shall be notified by
3 the division of workers' compensation within ten calendar days of
4 the date of the determination of the rate of tax to be imposed
5 for the following year. Net premiums, net deposits or net
6 assessments are defined as gross premiums, gross deposits or
7 gross assessments less canceled or returned premiums, premium
8 deposits or assessments and less dividends or savings, actually
9 paid or credited.

10 2. After January 1, 1994, the director of the division
11 shall make one or more loans to the Missouri employers mutual
12 insurance company in an amount not to exceed an aggregate amount
13 of five million dollars from the fund maintained to administer
14 this chapter for start-up funding and initial capitalization of
15 the company. The board of the company shall make application to
16 the director for the loans, stating the amount to be loaned to
17 the company. The loans shall be for a term of five years and, at
18 the time the application for such loans is approved by the
19 director, shall bear interest at the annual rate based on the
20 rate for linked deposit loans as calculated by the state
21 treasurer pursuant to section 30.758, RSMo.

22 287.715. 1. For the purpose of providing for revenue for
23 the second injury fund, every authorized self-insurer, and every
24 workers' compensation policyholder insured pursuant to the
25 provisions of this chapter, shall be liable for payment of an

1 annual surcharge in accordance with the provisions of this
2 section. The annual surcharge imposed under this section shall
3 apply to all workers' compensation insurance policies and
4 self-insurance coverages which are written or renewed on or after
5 April 26, 1988, including the state of Missouri, including any of
6 its departments, divisions, agencies, commissions, and boards or
7 any political subdivisions of the state who self-insure or hold
8 themselves out to be any part self-insured. Notwithstanding any
9 law to the contrary, the surcharge imposed pursuant to this
10 section shall not apply to any reinsurance or retrocessional
11 transaction.

12 2. [Prior to December 31, 1993, the director of the
13 division of workers' compensation shall estimate the amount of
14 benefits payable from the second injury fund during the ensuing
15 calendar year, and shall calculate the total amount of the annual
16 surcharge to be imposed during the ensuing calendar year upon all
17 workers' compensation holders and authorized self-insurers. The
18 amount of the annual surcharge to be imposed upon all
19 policyholders and self-insurers shall equal the moneys estimated
20 by the director of the division of workers' compensation to be
21 payable from the second injury fund during the calendar year for
22 which the annual surcharge is to be imposed, except that the
23 surcharge shall not exceed three percent of the policyholder's or
24 authorized self-insurer's workers' compensation net deposits, net
25 premiums or net assessments.] Beginning October 31, [1993] 2003,

1 and each year thereafter, the director of the division of
2 workers' compensation shall estimate the amount of benefits
3 payable from the second injury fund during the ensuing calendar
4 year and shall calculate the total amount of the annual surcharge
5 to be imposed during the ensuing calendar year upon all workers'
6 compensation policyholders and authorized self-insurers. The
7 amount of the annual surcharge percentage to be imposed upon each
8 policyholder and self-insured for the ensuing calendar year
9 commencing with the calendar year beginning on January 1, [1994]
10 2004, shall be set at and calculated against a percentage, not to
11 exceed three percent, of the policyholder's or self-insured's
12 workers' compensation net deposits, net premiums, or net
13 assessments for the previous policy year, rounded up to the
14 nearest one-half of a percentage point, that shall generate, as
15 nearly as possible, one hundred [ten] percent of the moneys
16 projected to be paid from the second injury fund in the ensuing
17 calendar year, less any moneys contained in the fund at the end
18 of the previous calendar year. All policyholders and
19 self-insurers shall be notified by the division of workers'
20 compensation within ten calendar days of the determination of the
21 surcharge percent to be imposed for, and paid in, the following
22 calendar year. For any year in which collections from the
23 maximum three percent tax rate are insufficient to meet the fund
24 balance requirement of one hundred percent of the previous year's
25 expenses, an audit shall be conducted by the state auditor of the

1 division of workers' compensation. A report of such audit shall
2 be submitted to the speaker of the house of representatives and
3 the president pro tempore of the senate upon its completion. The
4 net premium equivalent for individual self-insured employers and
5 any group of political subdivisions of this state qualified to
6 self-insure their liability pursuant to this chapter as
7 authorized by section 537.620, RSMo, shall be based on average
8 rate classifications calculated by the department of insurance as
9 taken from premium rates filed by the twenty insurance companies
10 providing the greatest volume of workers' compensation insurance
11 coverage in this state. For employers qualified to self-insure
12 their liability pursuant to this chapter, the rates filed by such
13 group of employers in accordance with subsection 2 of section
14 287.280 shall be the net premium equivalent. The director may
15 advance funds from the workers' compensation fund to the second
16 injury fund if surcharge collections prove to be insufficient.
17 Any funds advanced from the workers' compensation fund to the
18 second injury fund must be reimbursed by the second injury fund
19 no later than December thirty-first of the year following the
20 advance. The surcharge shall be collected from policyholders by
21 each insurer at the same time and in the same manner that the
22 premium is collected, but no insurer or its agent shall be
23 entitled to any portion of the surcharge as a fee or commission
24 for its collection. The surcharge is not subject to any taxes,
25 licenses or fees.

1 3. All surcharge amounts imposed by this section shall be
2 paid to the Missouri director of revenue and shall be deposited
3 to the credit of the second injury fund.

4 4. Such surcharge amounts shall be paid quarterly by
5 insurers and self-insurers, and insurers shall pay the amounts
6 not later than the thirtieth day of the month following the end
7 of the quarter in which the amount is received from
8 policyholders. If the director of the division of workers'
9 compensation fails to calculate the surcharge by the thirty-first
10 day of October of any year for the ensuing year, any increase in
11 the surcharge ultimately set by the director shall not be
12 effective for any calendar quarter beginning less than sixty days
13 from the date the director makes such determination.

14 5. If a policyholder or self-insured fails to make payment
15 of the surcharge or an insurer fails to make timely transfer to
16 the director of revenue of surcharges actually collected from
17 policyholders, as required by this section, a penalty of one-half
18 of one percent of the surcharge unpaid, or untransferred, shall
19 be assessed against the liable policyholder, self-insured or
20 insurer. Penalties assessed under this subsection shall be
21 collected in a civil action by a summary proceeding brought by
22 the director of the division of workers' compensation.

23 287.800. All of the provisions of this chapter shall be
24 [liberally] impartially construed with a view to the public
25 welfare, [and a substantial compliance therewith shall be

1 sufficient to give effect to rules, regulations, requirements,
2 awards, orders or decisions of the division and the commission,
3 and they shall not be declared inoperative, illegal or void for
4 any omission of a technical nature in respect thereto.] in order
5 to, in all cases arising thereunder, provide fairness for both
6 employees and employers and to promote ever-increasing economic
7 vitality and job retention for this state.

8 287.803. 1. An employee may elect to reject the provisions
9 of this chapter by reason such employee is a member of a
10 religious sect that is adherent of established tenets or teaching
11 whereby members are conscientiously opposed to the acceptance of
12 the benefits of any public or private insurance which makes
13 payments toward the costs of, or provided services for medical
14 bills including benefits of any insurance system established by
15 the Federal Social Security Act, 42 U.S.C. 301 et seq. The
16 employee shall submit a written waiver of all benefits pursuant
17 to this chapter and an affidavit that he or she is a member of
18 said religious sect, attesting to the rejection of the benefits
19 of public or private insurance.

20 2. The waiver and affidavit required by subsection 1 of
21 this section shall be made upon a form to be provided by the
22 division of workers' compensation.

23 3. An exception granted in regards to a specific employee
24 shall continue to be valid until such employee rescinds the prior
25 rejection of coverage or the employee or sect ceases to meet the

1 requirements of subsection 1 of this section.

2 4. Any rescission shall be prospective in nature and shall
3 entitle the employee only to such benefits that accrue on or
4 after the date the rescission form is received by the insurance
5 company.